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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,415

08/20/2003

Byron Wesley Harris

3433

7590

09/08/2004

Dr. David Landman  
#126  
3320 S. Fort Apache Rd.  
Las Vegas, NV 89117

EXAMINER

PAIK, STEVE S

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/643,415

Applicant(s)

HARRIS, BYRON WESLEY

Examiner

Steven S. Paik

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-14 and 16-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,3-10,12-14,16-19 and 21 is/are rejected.  
7) ☒ Claim(s) 11 and 20 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 20 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Receipt is acknowledged of the Amendment filed June 10, 2004. The Applicant cancelled claims 2 and 15, amended claims 1, 3, 4-7, 10, 11, 13, 14, and 18-20, and added a new claim 21.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 4, 6-10, 12, 14, 16-18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ricks (US 4,759,139) in view of Rubin (US 4,476,381).

Re claims 1, 3, 8-10, 14, 16, and 18, Ricks discloses an identification device and a method for using the device for an infant article such as a baby bottle that has a recess (area 32) and a retainer (side wall of the flange coupled to the recess would operate as an impediment to removal (retainer) of the label by an infant) to receive a label (34) having a side and an opposite side. The identification device includes a portion to display personal information (such as name of the infant) for easy identification.

However, Ricks does not specifically disclose a member of the identification device having the claimed structure of an identification device.

Rubin discloses a patient treatment system and method comprising an automated administration of the treatment of a patient (an infant may obviously be a patient), including establishing a direct linkage, at all stages of treatment, between the patient, on the one hand, and tests performed on the patient, specimens taken from the patient (infant article that includes personal information), and medication (article) and services administered to the patient, on the other hand. The patient treatment method and system includes a patient identification method which provides the patient with a wrist bracelet (identification device 18) which not only identifies the patient, but also facilitates generation, at various stages of treatment, of labels for identification of specimen containers containing specimens taken from the patient. The patient treatment method and system also includes a medication (medication bottle may be another example of an article that belongs to a patient/infant) verification method and device, by means of which the identity of the patient receiving medication is validated as coinciding with the identity of the patient for whom the medication is intended. The identification device includes a member (clasp 20) coupling at least a portion of the identification device comprising a pair of ends of said member coupled to a patient or an infant. The bracelet is not only limited to couple a patient, but it may be attached to any articles that can safely hold the identification device (col. 5, ll. 42-64). Furthermore, it is obvious to have the identification device to include a transparent and flexible material for a barcode reader to successfully read the encoded information.

In view of Rubin teaching, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further employ an identification device and the concept of the identification device in a patient treatment method and

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system to the baby bottle identification collar of Ricks due to the fact that identification of a patient/infant and his/her belongings, specimen for a medical test, and medical records data can be easily identified for the purposes of improving treatment process and reducing the chance of mixing different patient's (infant's) belongings, specimen for a test, and medical records. Furthermore, such modification of employing a bracelet type of identification holding device to an article would have been an obvious matter of design variation, well within the ordinary skill in the art, and therefore an obvious expedient.

Re claim 4, Ricks in view of Rubin discloses the identification device as recited in rejected claim 3 stated above, wherein the member of the identification device is curved (18 in Rubin reference) and each one of said pair ends of said member of the identification device is coupled to a portion of the infant article by tension (clasp 20 fastens the identification device to a patient, infant, or any suitable articles of a person by applying appropriate tension between them).

Re claims 6, 7, and 21, Ricks in view of Rubin discloses the identification device as recited in rejected claim 4 stated above, further comprising a strap (18) having an end and an opposite end, a portion of a first end of said member (clasp 20) of the identification device having a slot and a portion of a second end of said member of the identification device having a slot (Fig. 3A of Rubin) said slot of said first end of said member selectively receiving said end of said strap, said slot of said second end of said member (left and right side of the clasp 20) selectively receiving said opposite end of said strap so that a combination of said member of the identification device and said strap is coupled to the infant article (Figure 3A shows wrist of a patient, but the strap 18 may be

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attached to another object.) when the said end of said strap is coupled to said an opposite end of said strap.

Re claims 12 and 17, Ricks in view of Rubin discloses the identification device as recited in rejected claims 1 and 14 stated above, wherein at least a portion of the identification device comprise an identifier selected from the group consisting of a programmable semiconductor chip, a digital data recording device, a radio frequency identification device and a barcode (Figs. 1-3 of Rubin).

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ricks (US 4,789,139) as modified by Rubin (US 4,476,381) as applied to claim 3 above, and further in view of Melin et al. (US 5,279,057).

The teachings of Ricks in view of Rubin have been discussed above. Rubin discloses a wrist bracelet to couple the identification device to a patient, but does not show the member comprising an adhesive.

Melin discloses a device for the identification of objects such as patients, competitors and visitors to trade fairs, animals and baggage. The identification device is made from a rear-resistant material having adhesive tape applied at a portion of the attachment. The adhesive tape is one of a common material to join pieces of material together. The adhesive tape of Melin provides functionally equivalent results as the clasp of Rubin by attaching the identification device to an object.

Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to have incorporated the adhesive tape, as taught by Melin, into the teachings of Ricks in view of Rubin for the purpose of attaching the identification device to an object which needs to be identified.

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5. Claim 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ricks (US 4,789,139) as modified by Rubin (US 4,476,381) as applied to claim 3 above, and further in view of Cheng (US 6,092,321).

The teachings of Ricks in view of Rubin have been discussed above. Rubin discloses a wrist bracelet to couple the identification device to a patient with the exception of explicitly showing a transparent plastic for protecting a label from destruction by a fluid.

Cheng discloses a device for the identification of patients comprising a pocket (11) with an opening for holding a label (17). The device is formed of a transparent plastic material (col. 1, ll. 58-60) for the purpose of protecting the label (17).

Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ the transparent plastic material of Cheng into the teachings of Ricks in view of Rubin for the purpose of protecting the information encoded in a label from any possible damages.

***Allowable Subject Matter***

6. Claims 11 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: none of the cited references discloses, teaches or fairly suggests a label including visible list recited in claims 11 and 20 and being received by the recess of the identification device enclosed by a retainer.

***Response to Arguments***

8. Applicant's arguments filed June 10, 2004 have been fully considered but they are not persuasive.

**Rejections of claims 1, 10, 14 and 18 under 35 U.S.C. § 102(b)**

The applicant's argument has been fully considered and claims 1, 10, 14, and 18 are now rejected under 35 U.S.C. § 103(a).

The examiner respectfully disagrees with the applicant's argument of Ricks '139 not defining an identification device having a recess for receiving a label. Column 2, line 64- column 3, line 10 of Ricks '139 discloses about a recess containing a label within a surrounding wall for retaining the label. Accordingly, Ricks' 139 reference discloses both a recess and a retainer.

**Rejections of claims 1, 10, 14 and 18 under 35 U.S.C. § 103(a)**

Applicant's arguments with respect to claims 5, 13 and 19 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments regarding claims 3, 4, 6-10, 12, 16, and 18 have been fully considered but they are not persuasive. The claims are rejected for the reasons discussed in this Office Action.

For the reasons discussed above, claims 1, 3-10, 12-14, 16-19, and 21 are rejected under 35 U.S.C. § 103(a), and claims 11 and 20 are objected.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven S. Paik whose telephone number is 571-272-2404. The examiner can normally be reached on Mon - Fri (5:30am-2:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 571-272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Steven S. Paik". The signature is fluid and cursive, with the first name "Steven" and last name "Paik" clearly distinguishable.

Steven S. Paik

Examiner

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ssp